

A Family Law Department
Client Guide on
Care Proceedings

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CARE PROCEEDINGS

General Comments

This leaflet provides an outline of the legal position for parents and carers. It is not a complete guide to the law and is not intended to be a guide as to how the law may apply to you or any specific situation. For more specific advice, please e-mail : pgammon@thursfields.co.uk or gbanks@thursfields.co.uk.

1. Who may make decisions about a child's care?

Essentially, decisions with regard to how a child is cared for rest with those who have Parental Responsibility. Parental Responsibility describes all the rights and duties that parents have in respect of their children.

When a child is born, the mother automatically acquires Parental Responsibility. A father acquires Parental Responsibility if he is married to the mother or he is registered upon the child's Birth Certificate (for children born after the 1st December 2003).

A unmarried father may also acquire Parental Responsibility by making a Parental Responsibility Agreement with the mother or going to Court and obtaining a Parental Responsibility Order or a Residence Order.

2. Social Services Involvement

The Social Services Department is responsible for making sure that children who live with their families are safe and are well cared for.

If the Social Services Department receive information that causes them concern about a child's welfare, they have a duty to investigate and may take action to protect a child.

If the Social Services Department believe a child is at risk of harm, then they may provide services to help the family or undertake a fuller assessment. If an assessment is undertaken, the Social Services Department will look at the child's needs, the parents' ability to safeguard the child's needs and may consider whether any action is required to safeguard the child.

If it is believed that the child may be at risk of continuing harm, the Social Services Department may call a meeting known as a Child Protection Case Conference. The purpose of the conference is to see whether the child could be properly protected without the need for any Court proceedings. By way of for example, provision and support being made available to the family. Various professionals are invited to the conference such as doctors and schools.

The conference may consider whether or not the child's name should be placed upon the Child Protection Register. This would only take place if the conference is of the opinion that the child is at risk of suffering significant harm. The nature of the harm would fall into one of four categories, physical, emotional, sexual or neglect.

3. What happens when Social Services start care proceedings?

If the Social Services Department either commence care proceedings or indicate that care proceedings are going to start, it is essential that legal advice is obtained. It is extremely important to have good legal advice from a solicitor who knows the law about children. The Law Society has a list of solicitors who are experts in the area of care issues and those solicitors are appointed to their Children Panel.

Parents and those with Parental Responsibility are able to obtain Public Funding (Legal Aid) automatically to be represented in Care proceedings.

If the Local Authority apply to the Court for a Care Order, then it has to establish that the child has suffered serious harm or is at risk of suffering serious harm in the future, because:-

- the care given is not what it would be reasonable to expect a parent to give or
- the child is beyond parental control

All Care proceedings start in the Family Proceedings Court (the Magistrates Court). In certain circumstances, if the case is complex, it may be transferred to the County Court or the High Court. All care cases are dealt with under the guidelines known as the Protocol for the Judicial Case Management in Public Law Children Act cases. This protocol was designed to make sure that cases are dealt with quickly and without any unnecessary delay. The guidelines state that such proceedings ought to be finished within a maximum timescale of 40 weeks. Sometimes if cases are very complicated, they may take longer.

4. The First Hearing

It is important to remember that no final decisions are made at this very early stage. Usually, before the case is listed for a first hearing, a Children's Guardian will have been appointed to represent the child's interests within the proceedings. A Children's Guardian is a very experienced and independent person who will make sure that the child's welfare is promoted. The Children's Guardian is independent of the Local Authority and will usually appoint a solicitor from the Children Panel to represent the child in the Court.

At the first hearing, the Court will need to consider:-

- whether or not to make an interim care order or some other interim order, and/or
- make any initial directions as to how the case will progress and how the evidence will be produced

It is extremely important that the parent or person with Parental Responsibility attends the first hearing.

5. Orders that can be made at the first hearing

The Court could make a number of different orders:-

Interim Care Order (ICO)

The Court can only make an ICO if it has good reason to believe that the child has been seriously harmed or is likely to be seriously harmed and that making an ICO is the best thing for the child.

The first ICO can last for up to eight weeks and can then be renewed after every four weeks.

The Social Services Department should, if they wish the Court to make an ICO, prepare what is known as an Interim Care Plan. This plan would have details of where the child would be living, what arrangements have been made for the child to have contact and any other proposals that the Social Services Department believe the Court should consider.

An ICO means that the Local Authority would share Parental Responsibility with the parents. However, if an ICO is made, it would give the Local Authority power to decide where the child would live even if the parents did not agree with that decision.

Interim Supervision Order (ISO)

An ISO does not give the Local Authority Parental Responsibility but would mean that the Social Services Department would be involved with the child and how the child is being cared for. Once again, this type of order could only be made if the Court decides that there are good reasons to believe the child has been seriously harmed or is likely to be seriously harmed and that this is the best thing for the child.

Residence Order

The Court could make a Residence Order limited for a period of time, if it agrees that someone in the family (sometimes grandparents, aunts or uncles) would be able to care for the child during the period of

the order. This would mean that Parental Responsibility is shared with the person who has the Residence Order.

Contact Order

Before the Court makes any order as to where the child is going to live, it has to consider the arrangements for contact if the child is not going to live at home.

6. The Children's Guardian

The Court will usually appoint a Children's Guardian. The Children's Guardian will provide the Court with information and an opinion about the child's welfare. The person is independent and is from CAFCASS (Children and Family Court Advisory and Support Service). The Guardian is independent of the Local Authority and is appointed to enable the Court to be informed of the child's best interests and welfare. The Guardian will make enquiries as to what the Social Services Department have done to help and how they may still be concerned about the child. The Guardian will also talk to the child (depending upon their age) and will seek directly their wishes and feelings about what they would like to happen. The Guardian will also very carefully read any files maintained by the Social Services Department.

The Guardian will want to see the parents and other family members. The Guardian may also make enquiries as to other people who are involved with the child.

The Guardian will prepare a written report for the Court. This is usually the last document filed with the Court. The Guardian will make a recommendation to the Court as to the child's best interests and welfare for the future. The Guardian is extremely important to the Court process and the Court will listen very carefully to the Guardian's views.

If the child is of sufficient age and understanding, he or she may disagree with the Guardian's recommendation. In those circumstances, the child may have his or her views given to the Court directly by the solicitor who was appointed to represent the child's interests through the Guardian. These instructions can be given to the solicitor and presented to the Court even if the Guardian does not agree with them.

7. The Court Proceedings

There may be further interim or direction hearings when the Court will look at a number of issues:-

- where the child will continue to live during the case
- who the child will see during the case
- how the case will proceed to a final hearing

The Court will continue to have an overview of the case and may consider a change in the arrangements for the child if necessary.

The Court will not be able to make a final decision until all the information has been gathered in. The Court will need to receive statements, reports and assessments and will decide who is to prepare them and what assessments will be necessary.

The Court will decide when reports and statements are to be filed (given to the Court) and will allow all of the parties involved in the case time to reply and set out their own case.

The Court may decide that certain experts could assist it and when their reports are filed.

The Court will also consider whether or not the case should remain within the Family Proceedings Court or be transferred to a higher Court.

8. The Final Hearing

Before the final hearing there is usually a final Directions appointment, known as a Pre-Hearing Review. At this hearing, the Court will make sure that all the statements and reports to be filed have been completed and that the case is ready for the final hearing. Before the final hearing, the Local Authority will have prepared a Care Plan, which will set out the plan for the child and how the child should be cared for in the long term.

The Court will receive a statement from the parents with any supporting statements from witnesses and will receive the final report of the Children's Guardian.

The Court will have read all the papers, statements and reports and the Care Plan before the hearing starts. If there is disagreement between the parties about the Care Plan, the Court will hear evidence from any of the witnesses or experts. The Local Authority will put its case first, then the parents and then finally the Court will hear from the Children's Guardian.

9. How does the Court make a decision?

The Court first of all has to consider whether it believes that the child has been seriously harmed or is at risk of being seriously harmed in the future and that such harm is because of the care that has been given to the child by his or her parents. This is known as the Threshold Criteria.

The Court can only proceed to consider whether or not to make an order if it believes that the Threshold Criteria has been met.

If the Threshold Criteria has been met, then the Court will proceed to what is known as the welfare stage.

The Court will need to consider whether or not an order should be made and in so considering, the Court will look at the child's best interests in terms of his or her welfare. To help the Court, there is a list of matters to be considered known as the Welfare Checklist.

The Court will only make an order if it is in the best interests of the child. The Court will also only wish to make the minimum order needed to protect the child. The Court is not there to consider necessarily fault or blame and sometimes, the Court may consider that the Threshold Criteria has been reached even if the parent has not done anything wrong. The Court may accept that the parent has been trying their hardest but has not been able to provide a level of care which is good enough for the child.

10. What Orders could be made?

The Court has a number of options open to it, if it decides that it needs to make an order:-

Supervision Order.

A Supervision Order would not give the Local Authority Parental Responsibility. It would mean that the parent remains responsible for the child's care but the Social Services Department have the power to supervise how that care is given to the child. Initially, a Supervision Order lasts up to one year, after which the Local Authority could ask the Court to extend the Supervision Order up to a further two years. The Court will have to approve a Supervision Plan and this will usually be in the form of a contract between the Local Authority and the parent. The plan will set out what is expected from the parent and what will be provided by the Social Services Department.

Care Order.

This is an order that provides the Local Authority with Parental Responsibility. A Care Order itself does not mean that the parent loses Parental Responsibility but it does mean that the Local Authority could override the parents' wishes if it believes that it would be best for the child.

The Court can make a final Care Order for the child if he or she is under the age of 17 years.

Before making a final Care Order, the Court has to consider the child's contact.

Once a Care Order is made, the Local Authority will be able to make decisions about where the child will live. The Local Authority could still, if the risks are not too high, consider returning the child to the care of the parent.

If a child is made subject to a Care Order, the Local Authority holds regular reviews. An Independent Reviewing Officer (IRO) is appointed to chair the meetings and to look at the Care Plan. The IRO is independent from the management of the case which means that that person is separate from the people who will be dealing on a day to day basis with the child. At these reviews, the IRO will make sure that the parents' views are listened to and also the views of the child.

Residence Order

If the Court makes a Residence Order, it would usually mean that the child lives with someone other than his or her parents. This can sometimes be a member of the family. A Residence Order would provide Parental Responsibility to that person or persons for the period of the Residence Order. Again once, the Court will also consider the arrangements for the child's contact.

11. How long does a Care Order last

A Care Order will remain in force until the child is 18 years old unless the Court :-

- makes a Residence Order
- ends the Care Order
- replaces the Care Order with a Supervision Order
- makes an Adoption Order

12. How can a Care Order be ended?

A parent can ask the Court to end a Care Order. A parent may be able to receive Public Funding but Legal Aid for ending a Care Order is not automatically granted. The granting of Public Funding in such a case depends upon both the merits of the application and the means of the person seeking funding.

The Court would have to decide whether it is in the child's best interests for the Care Order to be discharged. The Court will therefore look at any current risks to the child. The Court could decide to replace the Care Order with a Supervision Order, which ends the Local Authority's Parental Responsibility but will allow them to help supervise how the child is cared for.

Law and procedure relating to child protection is complicated. It is essential therefore that in any specific case, legal advice is sought at the very earliest opportunity.

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